STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARNELL NORRIS, JR.,

Defendant-Appellant.

UNPUBLISHED
September 15, 2005

No. 255812
Wayne Circuit Court
LC No. 04-000943-01

Before: Meter, P.J., and Murray and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to concurrent terms of seven months to five years' imprisonment for the felon in possession of a firearm and CCW convictions. These sentences are to be served consecutive to two years' imprisonment for the felony-firearm conviction. We affirm.

On appeal, defendant argues that the police officers had no reasonable suspicion of criminal activity that would have justified a *Terry* investigative stop, *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), and therefore, the trial court should have suppressed the handgun seized from the stop. We disagree.

Here, the trial court, in a detailed, well reasoned opinion from the bench, denied defendant's motion to quash the information based upon its findings that that the police officers had probable cause or reasonable suspicion to stop defendant. We review the trial court's factual findings for clear error, *People v Yeoman*, 218 Mich App 406, 410; 554 NW2d 577 (1996), while the question of whether the officers' suspicion was reasonable under the Fourth Amendment is a question of law that this Court reviews de novo. *People v Bloxson*, 205 Mich App 236, 245 (Holbrook, Jr., P.J.), 249 (Fitzgerald, J., concurring in Judge Holbrook's opinion); 517 NW2d 563 (1994).

Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). Defendant specifically argues that his Fourth Amendment rights were violated because Officer David Kline's encounter with defendant constitutes an invalid *Terry* stop. We disagree.

Contrary to defendant's argument but consistent with the trial court's conclusion, we hold that Officer Kline's initial contact with defendant was not a seizure, and the abandoned gun was not subject to suppression. There is no bright line rule to determine when a police chase constitutes a seizure. In *People v Mamon*, 435 Mich 1, 4 n 2; 457 NW2d 623 (1990), the Court observed that *People v Shabaz,* 424 Mich 42; 378 NW2d 451 (1985), had assumed without deciding that the police chase constituted a seizure. Following *Michigan v Chesternut*, 486 US 567; 108 S Ct 1975; 100 L Ed 2d 565 (1988), the *Mamon* Court concluded that a person is not seized when the police never exhibited any show of authority which would indicate to a reasonable person that he was not free to leave. *Mamon, supra* at 12. In *California v Hodari D*, 499 US 621; 111 S Ct 1547; 113 L Ed 2d 690 (1991), the Supreme Court held that a seizure does not occur until an officer physically detains a suspect. See, also, *People v Lewis,* 199 Mich App 556, 558-560; 502 NW2d 363 (1993).

Officer Kline testified at the preliminary examination that, while heading westbound on Longfellow in a semi-marked police car to investigate a complaint of loitering, he and Officer Moss encountered Jerome Norris and defendant standing on the street. According to Officer Kline's testimony, both Jerome and defendant started to walk away, and Officers Kline and Moss approached Jerome and started talking to him. While talking to Jerome, Officer Kline observed defendant walk around a burgundy Suburban, kneel down and toss a black object, which Officer Kline believed to be a gun, underneath the vehicle. At the time Officers Kline and Moss were talking to Jerome, they did not question or detain defendant. Officer Kline simply observed what defendant was doing in the distance. There was also no testimony suggesting that Officer Kline displayed any intent to seize defendant prior to seeing the gun. There is no evidence that Officer Kline used any technique to coerce defendant into approaching him to answer questions or that a reasonable person in the same circumstance would have felt compelled to stay and respond to the trooper. *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998). We therefore reject defendant's contention that, pursuant to *Shabaz*, the police effectively "seized" defendant under the Fourth Amendment. The record clearly shows that defendant was merely followed by, and then observed by police, and thus we hold that he was not seized within the meaning of the Fourth Amendment when he discarded the gun underneath the vehicle. *Lewis, supra*.

Finally, in his *in pro per* supplemental brief, defendant argues he was denied a fair trial when the trial court improperly admitted hearsay statements of Officer Moss into evidence. We disagree. We review a trial court's determination regarding the admission of evidence for an abuse of discretion. But where the decision involves a preliminary question of law our review is de novo. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. MRE 801(c). An out-of-court statement introduced to show its effect on a listener, as opposed to proving the truth of the matter asserted in it, does not constitute hearsay under MRE 801(c). See *People v Moorer*, 262 Mich App 64, 71; 683 NW2d 736 (2004). With regard to the admission of Officer Kline's statements to Officer Moss, defendant argues that it was not admissible as an excited utterance, MRE 803(2). Regardless of whether it was admissible under MRE 803(2), Officer Kline's statements to Officer Moss were not offered to prove the truth of the matter asserted; rather, the purpose of the statements was to show the effect they had on Officer Moss and explain Officer Moss' subsequent actions of detaining defendant and Jerome, patting them down and

handcuffing them. The testimony was not hearsay and its admission was proper. As such, we hold that the trial court did not abuse its discretion in admitting the challenged evidence.

Affirmed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Bill Schuette